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REPORT TO THE LEGISLATURE

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Sunset Review

BOARD OF DENTISTRY

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The 1977 Sunset Law terminates the Board on July 1, 1981. This review provides information to assist the Legislature in making the decision to terminate, modify or continue the Board.

This report presents fourteen areas for Legislative consideration (page 24) including:

- ▶ Changes in laws relative to county registration, Board travel expenses and appointment, Board emergency fund, and association approval authority of public funds.
- ▶ Concerns of the Federal Trade Commission with denturism and practice restrictions.
- ▶ The Board should review its complaint process.

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January 1980

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The Legislative Audit Committee
of the Montana State Legislature:

Herein transmitted is our sunset performance review of the Montana Board of Dentistry. The review was conducted in response to the 1977 Sunset Law, which terminates the board on July 1, 1981.

The review focused upon an examination of board operations. It does not encompass an audit of the board's financial transactions or overall compliance with state laws.

There are no formal recommendations in the report since the responsibility for such recommendations lies with the Audit Committee. Nevertheless, we discussed the contents of the report with a number of individuals and organizations, including the director of the Department of Professional and Occupational Licensing, the members of the Board of Dentistry, the Governor's Office of Budget and Program Planning, the Chief of the Dental Health Bureau of the Department of Health and Environmental Sciences, and several state professional associations.



We wish to express our appreciation to the members of the board and to the director of the department and his staff for the assistance they provided during the review. We also wish to thank the members of the dentistry profession for assistance they gave us.

Respectfully submitted,

Morris L. Brusett

Morris L. Brusett, C.P.A.
Legislative Auditor

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APPOINTIVE AND ADMINISTRATIVE OFFICIALS

BOARD OF DENTISTRY

		<u>Term Expires</u>
Douglas E. Wood, DDS President	Kalispell	1982
William G. Thomas, DDS Vice President	Billings	1983
Robert W. Fritz, DDS Secretary/Treasurer	Helena	1984
Don R. Bilden, DDS	Columbus	1980
Jeanette Buchanan, RDH	Columbia Falls	1984
J. Robert Hickman, DDS	Bozeman	1981

DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Ed Carney,	Director
Lisa Casman,	Administrative Assistant

Chapter I

BACKGROUND

This sunset review addresses the state regulation of dentists and dental hygienists by the Board of Dentistry--a state board within the Department of Professional and Occupational Licensing.

REPORT OBJECTIVES

The 1977 Legislature passed a law terminating numerous regulatory boards and agencies, including the Board of Dentistry. This law, commonly referred to as the "sunset law," requires the Legislative Audit Committee to conduct a performance review of each terminated agency. The performance review must objectively examine the need for each regulatory board/agency and the Audit Committee must offer recommendations for reestablishment, modification, or termination.

The sunset law also requires an examination of the following questions during the conduct of the committee's review:

- (a) Would the absence of regulation significantly harm or endanger the public's health, safety, or welfare?
- (b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public's health, safety, or welfare?
- (c) Is there another less restrictive method of regulation available which could adequately protect the public?

- (d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?
- (e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?
- (f) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

Using the information contained in this report, and that gathered during a public hearing, the committee will address these six questions. During the hearing process, testimony and comments will be heard from the board/agency, the profession, and interested members of the public.

In defining legislative intent, the sunset law states that by requiring periodic evaluation in the form of a performance review, the legislature will be in a better position to ensure that agencies and their programs exist only to be responsive to state residents' needs. The sunset law terminates the Board of Dentistry on July 1, 1981.

DENTISTRY PROFESSION

Dentistry is a profession involved with the prevention, diagnosis, and treatment of oral diseases and disorders with primary emphasis on the health of the teeth. Several occupations are involved in the dentistry profession. Two of the occupations require licensure--dentists and dental hygienists, while dental

assistants and dental laboratory technicians are not licensed.

Dentists are the primary providers of dental care and have final responsibility for the delivery of all dental services. Dentistry is usually practiced in private offices. A majority of dentists practice in isolation from each other and do not normally use centralized treatment centers, i.e., hospitals and other institutions, as do physicians. Approximately 90 percent of all dentists are general practitioners compared to 20 percent for physicians.

Dental hygienists and dental assistants can only practice under the supervision of licensed dentists. Dental hygienists clean and polish teeth, expose and process dental x-rays, apply fluorides to the teeth, and instruct patients in oral hygiene and proper diet. Dental assistants primarily assist the dentist as he provides treatment services for patients. Their tasks include preparation of the patient, processing dental x-rays, passing instruments and materials to the dentist, and the preparation of materials used in the treatment process.

Dental laboratory technicians manipulate and shape materials to construct dentures, crowns, bridges, and orthodontic devices. Technicians are required to receive written work authorization forms signed by a licensed dentist prior to initiating any construction.

The demands for dental care by the public have been increasing annually due to greater affluence, better education, and increased population growth. Americans spend nearly \$10 billion a year on dental care, which is approximately 6 percent of total health care expenditures. Nevertheless, only about 50 percent of the population use dental services at least once a year.

In 1976 Montana had 55 resident dentists per 100,000 population compared with the national average of 52. Presently, the board licenses 477 dentists living in Montana. An additional 298 out-of-state dentists are licensed to practice in Montana. There are 264 dental hygienists licensed in Montana; 179 in-state and 85 out-of-state.

Chapter II

BOARD OF DENTISTRY

INTRODUCTION

The State Board of Dental Examiners was created in 1895 along with the State Board of Medical Examiners and the State Board of Pharmacy. The intent of the law has remained basically the same over the years. The law establishes minimum qualifications for dentists and dental hygienists to practice in Montana and requires that they follow certain practice guidelines.

The present Board of Dentistry performs several statutory duties, which are to:

1. determine applicant qualifications, interview, and give examinations to those who qualify;
2. issue certificates to those who pass the examinations;
3. renew the licenses of dentists and dental hygienists annually ;
4. investigate complaints against licensees and analyze licensees' actions;
5. hold hearings when necessary and suspend or revoke licenses when justified;
6. affiliate with the national association (American Association of Dental Examiners) as an active member, pay regular annual dues, and send a delegate to the meetings of the association;
7. inspect the work authorization forms issued by dentists to dental laboratories; and
8. cause the prosecution of persons practicing without a license.

BOARD OPERATIONS

Structure

The board is composed of five dentists and one dental hygienist appointed by the Governor (section 2-15-1606, MCA), for five-year terms. The dental hygienist member was added in 1979 through Chapter 316 of the session laws. The six members must: (1) be licensed to practice in Montana; (2) have actively practiced in this state for at least five continuous years immediately before appointment; (3) be actively engaged in practice while serving on the board; and (4) be citizens of the United States and residents of Montana. At least three members of the board shall be appointed from a list of candidates submitted by the Montana Dental Association and one member shall be appointed from the list submitted by the Montana Dental Hygienists' Association.

The board is required by law to hold at least one meeting each year. However, the board generally meets two to four times a year in Helena. Two of the meetings are for administering the examinations and additional meetings are sometimes necessary for hearings on complaints, rule changes, etc. Board members receive \$25 per day compensation plus the travel expenses ordinarily provided by the state.

Staffing and Funding

The board is attached to the Department of Professional and Occupational Licensing for administrative

purposes. This means that the department provides administrative support to the board in the form of secretarial, legal, budgeting, and accounting services. The board is autonomous in decision-making functions with respect to policymaking, licensing and disciplinary procedures. The department provides a half-time position to administer the board's activities.

The board is financed from an account in the earmarked revenue fund. All of the money for board operations comes from examination and license fees paid by dentists and dental hygienists. Chapter 336 of the Montana Session Laws 1979 allows the board to set the examination, reexamination, and original license fees commensurate with costs. The renewal fees are to be set by the board not to exceed \$50 for dentists and \$25 for hygienists. The current fees charged by the board are shown in Illustration 1.

FEE SCHEDULE

	<u>Dentist</u>	<u>Dental Hygienist</u>
Application and examination	\$50	\$20
Reexamination	25	20
Renewal for in-state	25	3
Renewal for out-of-state	10	3
Penalty for late payment	3	3
Original license	15	15

Source: Compiled by the Office of the Legislative Auditor from board records.

Illustration 1

The following illustration depicts the financial history of the board from fiscal year 1972-73 through fiscal year 1978-79. Fund balances are as of June 30 of each year.

BOARD OF DENTISTS
FINANCIAL HISTORY

<u>Fiscal Year</u>	<u>Revenue</u>	<u>Expenditures*</u>	<u>Fund Balance</u>
1978-79	\$18,151	\$17,280	\$ 9,437
1977-78	19,001	20,289	8,566
1976-77	13,493	14,830	9,854
1975-76	13,655	14,083	11,191
1974-75	11,507	11,814	11,619
1973-74	9,859	8,126	11,926
1972-73	9,517	7,722	10,193

*Includes prior year expenditures, adjustments, and accruals.

Source: Compiled by the Office of the Legislative Auditor from the financial reports for the state of Montana.

Illustration 2

BOARD GOALS AND OBJECTIVES

The sunset law requires each board/agency under review to define its goals and objectives. The board defined its goals as being:

- To maintain quality dental care for the public and provide vigilant supervision of all dental practitioners in the public interest, by utilization of all legal means in disciplinary actions. Licensure of only those individuals who have demonstrated competency in the field of oral health care.
- To regulate the profession of dentistry and dental hygiene in Montana by reviewing applications, conducting examinations, and monitoring the practice of licensees in the public interest.

Based on the preceding goals, the board listed several objectives as follows:

- To renew 475 in-state and 300 out-of-state dentists and 250 dental hygienists per year. Evaluate 10 to 15 complaints per year, adopt rules for dental auxiliaries and provide for their continuing education and to utilize the dental association for help in investigation of complaints.
- To utilize the Western Regional Examining Board for conducting practical examinations which shall maintain a higher standard for testing, and conducting oral interviews and/or jurisprudence examinations to 60 to 65 dentists and dental hygienists in this state per year.
- To utilize a representative from the dental hygienists association for assistance in formulating the dental hygiene examination and input in regards to rules for dental auxiliaries. (A dental hygienist was added to the board in 1979 through Chapter 316 of the session laws.)

BOARD FUNCTIONS

Licensing

At the beginning of this chapter we listed eight functions for the board. The first three are concerned with the licensing of dentists and dental hygienists. All applicants have to meet certain qualifications and submit various items to be admitted to a jurisprudence examination and an interview by the board. The following requirements are necessary for a dentist to apply for licensure:

- Graduation from a recognized dental school approved by the board.

- A National Board Examination Certificate from the National Board of Dental Examiners. (This is a written examination on the practice of dentistry normally taken at the end of a dental student's senior year.)
- A certificate of successful completion of the practical examination given by the Western Regional Examining Board. (The practical examination requires performance of dental tasks on actual patients and a test setup for full dentures.)
- Three affidavits of good moral character, a recent notarized photograph, the signature of the dean of the applicant's dental school, and the school's seal.
- Payment of an examination and licensure fee and a cover letter stating the applicant's intent to practice in Montana.

The following are necessary for a dental hygienist to apply for licensure:

- Graduation from a school of dental hygiene offering a course of study recognized and approved by the board.
- A certificate of successful completion of the National Board of Dental Hygiene Examination.
- A certificate of successful completion of the practical examination given by the Western Regional Examining Board. (This examination requires cleaning a patient's teeth and exposing, developing, and mounting radiographs.)
- Affidavits of good moral character signed by two dentists, a recent and notarized photograph, the signature of an official of the applicant's dental hygiene school, and the school's seal.
- Payment of an examination and licensure fee.

The following illustration shows the number of applicants taking the board's practical examinations over the past six fiscal years. The first regional practical examinations were conducted in June 1979.

NUMBER OF APPLICANTS TAKING
AND PASSING THE PRACTICAL EXAMINATIONS

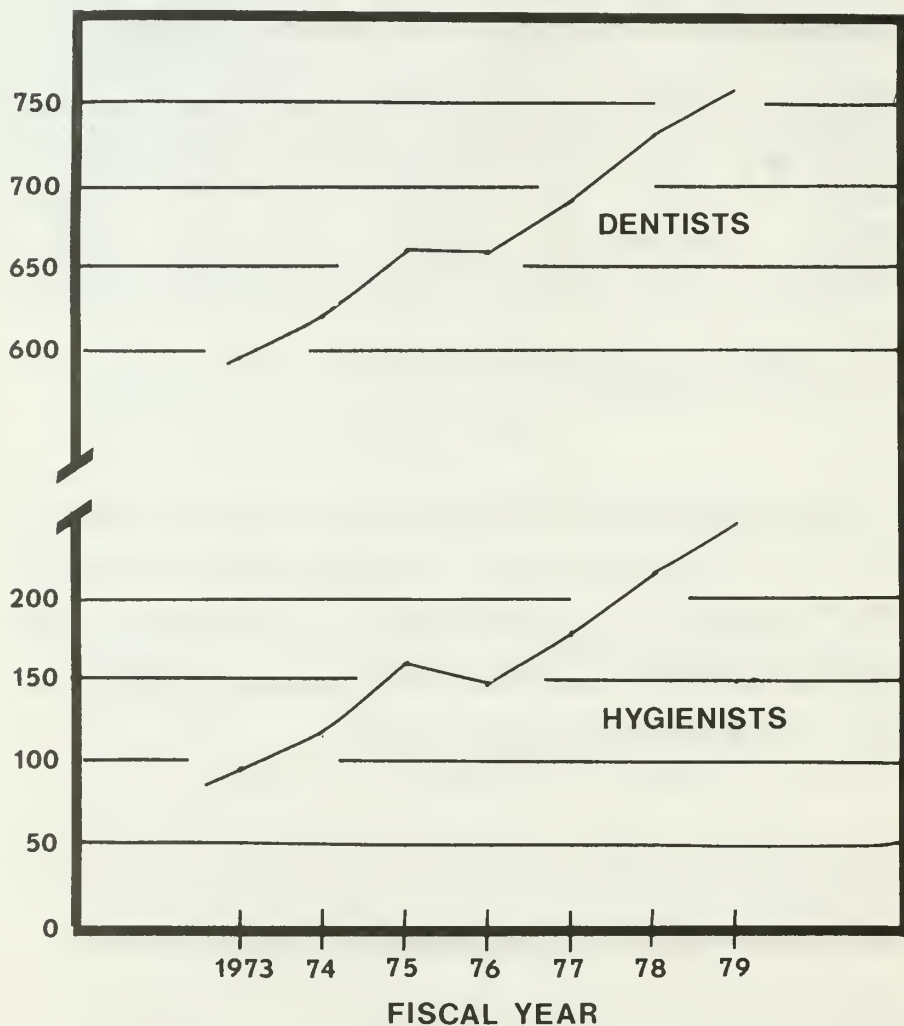
License Type:	<u>Dentists</u>			<u>Dental Hygienists</u>		
<u>Fiscal Year</u>	<u>Taken</u>	<u>Passed</u>	<u>Percent</u>	<u>Taken</u>	<u>Passed</u>	<u>Percent</u>
1978-79	23	23	100%	26	25	96%
1977-78	42	40	95%	36	32	89%
1976-77	55	46	84%	52	46	88%
1975-76	36	30	83%	31	26	84%
1974-75	45	30	67%	14	14	100%
1973-74	44	34	77%	19	16	84%

Source: Compiled by the Legislative Auditor from board records.

Illustration 3

The oral interview and jurisprudence examination are the final steps in the licensing process. Applicants successfully passing these are given the appropriate certificate. The following chart shows the number of license renewals each year.

NUMBER OF RENEWED LICENSES



Source: Compiled by the Office of the Legislative Auditor from board records.

Illustration 4

Complaints

The board has received, on the average, seven complaints a year for the last five years, according to

board records. However, the number of complaints has been on the increase with ten received in both 1977 and 1978.

Complaints are received by the board from several sources. Some come directly to the board by letters from dental patients. Others are forwarded by such sources as newspapers and the Consumer Affairs Division of the Department of Business Regulation. All of the complaints received by the board have been directed at dentists except for one which was concerned with the board's licensing examination. A small number of complaints were concerned with the use of dental auxiliaries but were directed at the employing dentist, who is responsible for the performance of the auxiliaries.

Complaints are received at the department by the board's administrative assistant. If the complaint has insufficient information the administrative assistant will mail a complaint form to the complainant to complete and return to the department. The administrative assistant will mail a copy of the complaint to each board member. Board members review the complaint and indicate the action they want to take. The administrative assistant determines the majority opinion of the board and either starts the investigation process or closes the file depending on the board's vote.

Often, if a complaint investigation is warranted, the complaint will be forwarded to the Montana Dental

Association. Twenty-five out of the 32 complaints that were investigated were done so by a peer review committee of the Montana Dental Association. The peer review committee examines the complaint and analyzes the quality of the dental work. The committee then reports its findings to the secretary-treasurer of the association who reports to the board. By law (section 37-2-201, MCA), members of the peer review committee are not liable for damages to a licensee for any reasonable action taken or recommendation made during a peer review.

In addition to using the peer review committees, the board had complaints investigated by individuals under contract with the department. In one case the department contracted with a private investigator. Two other complaints were investigated by a committee of dentists contracted by the department. The board investigated four complaints on its own.

Seven complaints were not investigated for various reasons. Of these seven, there were three instances where the complainant would not furnish the necessary information. One complaint was considered as information to the board. Another was resolved by the dentist and the patient. One concerned the scoring of the board's examination for dentists. And in one case the board determined it did not have authority over the matter.

The board has the final responsibility for taking any administrative action based on a complaint and for closing complaint files. Therefore, the board must review the results of all investigations and make a decision as to what action, if any, should be taken.

The board's complaint register dates back to November 1972 and shows 39 complaints through July 9, 1979. Complaints cover a wide range of problems. The most common complaint concerns dentures. Illustration 5 gives a breakdown of the 39 complaints.

SUMMARY OF COMPLAINTS

<u>Nature of Complaint</u>	<u>Total Number</u>	<u>Who Initiated</u>	<u>Investigated By</u>	<u>How Resolved</u>
Competence of Dentist	3	Dentist-1 Insurance Company-2	Peer Review-1 Dentists Under Contract-2	Dentist Left State-1 Pending-2
Unprofessional Conduct	4	Consumer-2 Dentist-1 Board-1	Peer Review-3 Board-1	No Violation of Act-1 No Cooperation from Complainant-1 Suspended from Association-1 License Suspended-1
Dentures	11	Consumer-11	Peer Review-11	No Violation of Act-4 No Cooperation from Complainant-1 Consumer Received Relief-3 Pending-3
Workmanship Other than Dentures	6	Consumer-6	Peer Review-4 Board-1 No Investigation-1	No Violation of Act-3 Pending-3
Fees	8	Consumer-8	Peer Review-5 No Investigation-3	No Violation of Act-2 No Cooperation from Complainant-5 Consumer Received Relief-1
Unlawful Use of Dental Auxiliaries	4	Consumer-1 Dental Auxiliary-2 Board-1	Peer Review-1 Board-1 Private Investigator-1 No Investigation-1	No Violation of Act-1 No Cooperation from Complainant-1 Dismissed Based on Rule Change-1 Pending-1
Miscellaneous ¹	3	Consumer-1 Dentist-1 Dental Auxiliary-1	Board-1 No Investigation-2	Consumer Received Relief-1 Dentist Passed Examination-1 Auxiliary Received Certificate-1
Total	39	Consumer-29 Dentist-3 Dental Auxiliary-3 Board-2 Insurance Company-2	Peer Review-25 Board-4 Dentists Under Contract-2 Private Investigator-1 No Investigation-7	No Violation of Act-11 No Cooperation from Complainant-8 Consumer Received Relief-5 License Suspended-1 Pending-9 Other-5

¹ Dentist would not give the complainant his X-rays, dentist questioned the licensing examination, and dental auxiliary questioned a dentist about an X-ray certification examination.

Source: Compiled by the Legislative Auditor from board records.

For three of the eight cases, which were closed because of lack of cooperation by the complainant, the board did not receive answers to its request for information. In the remaining five cases the complainant did not maintain contact with the association's peer review committee. One complaint resulted in legal action against a licensee. In this case the dentist's license was suspended indefinitely. Of the remaining 14 complaints, 5 had miscellaneous resolutions which are shown in Illustration 6, and 9 complaints were still pending. The following illustration gives the status of the complaints that were pending.

PENDING COMPLAINTS*

<u>Date</u>	<u>Nature</u>	<u>Who Investigated</u>	<u>Present Status</u>
10/1/76	Competence of Dentist	Dentists Under Contract	Board to review results of latest investigation completed 6/79
10/1/76	Competence of Dentist	Dentists Under Contract	Board to review results of latest investigation completed 6/79
11/11/77	Allowing Unlicensed Auxiliary to Perform Hygienist Tasks	Private Investigator	Investigation completed 5/78 Pre-hearing conference 7/79
3/8/78	Dentures	Association Peer Review	Complainant requested second investigation 3/79. Conference between association and board 7/79
4/26/78	Workmanship other than Dentures	Board	Waiting for reply from complainant
7/19/78	Dentures	Association Peer Review	Investigation revealed dentures satisfactory. Department attorney to write complainant; allow for response
8/4/78	Dentures	Association Peer Review	Waiting for reply from complainant
8/21/78	Workmanship other than Dentures	Association Peer Review	Waiting for reply from complainant
5/3/79	Workmanship other than Dentures	Association Peer Review	Waiting for investigation results

*As of July 9, 1979

Source: Compiled by the Office of the Legislative Auditor from board records.

Illustration 6

The average time required to close a complaint was approximately six and one-half months. The pending complaints have been open for an average of approximately 17 months.

The board's handling of complaints will be discussed further in Chapter IV.

Other Board Functions

The board is affiliated with the American Association of Dental Examiners, pays regular annual dues, and may send a delegate to association meetings. Board members indicated, however, that they are not always able to send a delegate to the meetings because of limited appropriations.

Another function of the board is to inspect work authorization forms issued by dentists to dental laboratories. Board members have said that they do not regularly inspect these forms but they could if the need arose. A work authorization form is similar to a prescription that a person would obtain from a doctor. It prevents a person from receiving services from a dental laboratory without seeing a dentist first.

EXEMPTIONS TO REGULATION

The law states that a person who practices dentistry or who does an act of dentistry without having first secured a certificate to practice in this state is guilty of a misdemeanor. The exemptions to this requirement are given in section 37-4-103, MCA. The first exemption is a dental laboratory technician who constructs or repairs bridges, crowns, dentures, etc., as long as the casts, models, or impressions have been

made by a licensed dentist. The finished dental appliance must be returned to the dentist on whose order the work was constructed.

Legally qualified physicians or surgeons or dental surgeons of the United States Army, Navy, Public Health Service, or Veterans' Bureau are exempt. Also exempted are licensed practitioners of other states who are making clinical demonstrations before groups of dentists.

Faculty members of dental schools approved by the board may perform dental procedures necessary to their teaching functions. Dental students may perform dental procedures under the supervision of an instructor of a dental school approved by the board provided such procedures are a part of the assigned teaching curriculum. Montana's only dental school, which trains dental hygienists, is at Carroll College.

Dental hygienists are not considered to be practicing dentistry as long as they practice within the definition of dental hygiene. Section 37-4-402(2), MCA, requires all people who engage in the practice of dental hygiene or practice as a dental hygienist to be licensed. The exemptions to this requirement are licensed dentists and licensed physicians and surgeons.

Chapter III

OTHER REGULATION

Dentists and dental hygienists are licensed in all 50 states and the District of Columbia. In Montana, the only state agency with extensive regulatory powers over dentists and dental hygienists is the Board of Dentists. There is no practice regulation of the two professions by the federal government.

Dentists filing claims for services provided under Medicaid can be subject to review by a Medicaid Peer Review Committee. Medicaid claims are screened to determine if they meet established guidelines. If there are any discrepancies, the claim and practices of the dentist are reviewed by a peer consultant and may be further scrutinized by a committee of peers selected by the screening organization. Any indications of fraud or overt abuse of the claim system which are discovered during investigation are forwarded to the Department of Revenue or the Program Integrity Bureau of the Department of Social and Rehabilitation Services (SRS), respectively, for continued review. The Department of Revenue is empowered by law (section 53-2-501, MCA) to investigate matters relating to public assistance when requested by SRS. If during these reviews the examining agencies discover any activity which could be a violation of the licensing act they may inform the board. We noted that on one occasion,

information was forwarded to the board. This resulted in a board investigation, and a rule change by the board providing for an exception to the direct supervision of dental auxiliaries. No disciplinary action was taken.

Professional societies and other organizations have some self-regulatory powers. One aspect of professional society involvement is the peer review process of the Montana Dental Association that was discussed in Chapter II. This society, like other state societies, normally sets standards of conduct for its members and also provides input to the state licensing boards. Professional societies also provide guidelines for approved dental schools. Continuing education for society members is another concern of many professional societies. The Montana Dental and Dental Hygienists' Associations are currently considering continuing education requirements for their members.

The 51 dental boards (including the District of Columbia) regulate dentists and dental hygienists in a fairly uniform fashion. The following table compares various facets of Montana's regulatory process with those of the other states.

REGULATION OF DENTISTS AND DENTAL HYGIENISTS

<u>Facet</u>	<u>U.S.</u>	<u>Montana</u>
Board Size	1 board - 4 members 21 boards - 5 members 20 boards - 6-8 members 9 boards - 9-11 members	*6 members
Board Make-up**	27 boards - dentists only 7 boards - majority dentists with some public members 19 boards - majority dentists with some hygienists (voting)	*5 dentists and 1 dental hygienist
Examination, Dentists	46 boards - Written (30 accept national) 20 boards - Oral 42 boards - Practical (clinical)	Written Oral Practical
Examination, Hygienists	43 boards - Written 12 boards - Oral 29 boards - Practical (clinical)	Written Oral Practical
Renewal, Dentists	38 boards - Annual 12 boards - Biennial 1 board - None	Annual
Renewal, Hygienists	36 boards - Annual 9 boards - Biennial 1 board - None	Annual
Continuing Education		
Dentists	6 boards - Required	No
Hygienists	3 boards - Required	No

*The dental hygienist member was added in 1979 through Chapter 316 of the session laws.

**Three boards have some public members and some hygienists and one board consisted of seven dentists and two state officials.

Source: Compiled by the Office of the Legislative Auditor using U. S. Department of Health, Education, and Welfare data, 1977.

Chapter IV

AREAS FOR LEGISLATIVE CONSIDERATION

In previous reviews of regulatory boards in Montana the design and effectiveness of certain aspects of the regulatory process have warranted legislative consideration. The intent of the following sections is to briefly discuss these aspects as they apply to the Board of Dentistry. The areas for consideration are:

1. Board's managing of complaints.
2. Assessment of quality care.
3. Denturism - the sale of complete dentures directly to consumers by nondentists.
4. Board membership.
5. Registration of dentists with county clerk and recorders.
6. Continued competency.
7. Reporting requirements for the board.
8. Duties of licensees.
9. Practice restrictions.
10. Exclusive tying arrangements.
11. Reimbursement for board travel.
12. Emergency fund.
13. Automated license records.
14. Multi-year renewal.
15. Other areas of consideration.

During our review we questioned the reciprocity licensing policy of the board. The application forms sent to all dentist and dental hygienist applicants

indicated that Montana makes no provision for the recognition of licenses from other states even though sections 37-4-306 and 307, MCA, provide for reciprocity. With Montana now using the Western Regional Examining Board for the dentists' and dental hygienists' practical examinations the board will accept for licensure all applicants who successfully pass the Region's examination. Montana, Oregon, Utah, and Arizona are members of the Western Region. The applicants will still be required to take the board's examination on jurisprudence and submit to an oral interview.

COMPLAINTS

Following is a discussion of two issues related to the board's managing of complaints. One is the use of association peer reviews, and the other is delays in concluding on suspension or revocation proceedings.

Association Peer Reviews

The board has the duty to analyze complaints against licensees (section 37-4-323, MCA). Along with this duty the board has the authority to determine how complaints are to be investigated. The board relies on the peer review committees of the Montana Dental Association to investigate the majority of complaints. These complaints are usually concerned with dentures, workmanship, fees and unprofessional conduct.

Utilization of a private association for investigation of complaints for the state may present problems unless certain responsibilities for both parties are agreed upon. The object of the association, as stated in its constitution, is ". . . to promote the usefulness, honor and interest of its members." Yet, the association is performing an investigative function established for a board which was created to protect the interests of the public. The department attorney notified the board of potential abuse "where the investigating body consciously or otherwise lets its demand for protecting the licensee override its obligation to make an unbiased investigation." However, the attorney also noted that the association investigative procedure is adequate ". . . if the board carefully (as opposed to rubber stamping) evaluates the peer review investigation report, and makes its own independent evaluation on whether to concur with, further investigate on its own, or reject the peer review recommendations."

With regard to the investigation evaluation, board action appears to be inadequate. The board has become removed from an important area of the complaint process. Our review of complaints records indicated that eleven of the twenty-five complaints investigated using the association's peer review process do not show any final decision by the board. It must be assumed that the board concurred with the findings of the peer

review. In addition, we noted that in five other instances, complainants did not maintain contact with the investigating peer review committee. This resulted in no action by the committee or followup by the board, and the cases were closed.

The Montana Dental Association has also shown a reluctance in some cases to report its findings to the board. Four complaints have taken an average of approximately five and one-half months for the investigation report to be sent to the board after the peer review committee submitted it to the association. The association has also indicated that it makes its decisions independently of the board and will only report the conclusions. The actual findings of the peer review committees are confidential and will be retained by the association.

In recommendations to the board the department attorney addressed the board's loss of contact with the investigative function. The attorney stated that if the board is to continue the existing investigative procedure then a formal agreement with the association is necessary. The agreement would indicate board needs and association obligations. The board has since contracted for one investigation, but still has no overall agreement on investigative procedures.

Disciplinary Delays

There have been lengthy delays in board action on complaints that could result in suspension or revocation of a dentist's license. The lengthy delays appear attributable to lengthy investigation procedures, evidence problems, pre-hearing plea bargaining, and the time involved in reaching board and department decisions. Three complaints had been pending for an average of approximately 29 months. In one case the board began suspension proceedings approximately 12 months ago but has failed to hold a hearing. In another case the investigation report (issued approximately 26 months ago) stated that the dentist was not practicing dentistry at an acceptable level of competence and was causing harm to his patients. The legal notice for hearing was issued approximately 22 months ago but a hearing has yet to take place. To illustrate the types of events surrounding suspension or revocation actions, chronologies for two of the complaints are presented below:

Complaint #1

11/11/77	. . . .	Complaint filed
02/03/78	. . . .	Investigation begins
05/08/78	. . . .	Investigation completed
10/05/78	. . . .	Board rules for suspension
10/17/78	. . . .	Licensee requests hearing
12/04/78	. . . .	Informal hearing set
12/20/78	. . . .	Licensee changes attorneys
01/24/79	. . . .	New informal hearing date set
02/24/79	. . . .	Informal hearing held
04/07/79	. . . .	Proposal and counter proposal not accepted by board

05/08/79 Hearings officer appointed
 06/20/79 New proposal offered and
 rejected
 06/27/79 New hearings officer appointed
 due to disqualification
 07/12/79 Prehearing
 07/23/79 Board files statement of
 facts and issues
 09/07/79 Licensee's attorney notified
 of not filing statement of
 facts
 10/05/79 Second prehearing order made
 10/26/79 Consent order sent to
 licensee
 11/16/79 Agrees to 30 day suspension
 without hearing

Complaint #2

10/01/76 Board notified of possible
 violation
 10/30/76 Board receives association
 peer review findings
 12/03/76 Board wants to place licensee
 on probation
 01/14/77 Board informed by department
 attorney of lack of authority
 for probation
 06/19/77 Re-investigation scheduled
 09/08/77 Investigation report issued
 12/07/77 Board rules for suspension
 12/14/77 Licensee desires hearing
 12/22/77 Alternative to suspension
 proposed by licensee's
 attorney
 09/15/78 Following four proposals
 and counter proposals,
 board requests further
 review of licensee's
 work
 05/21/79 Following several more counter
 proposals offered to board
 and rejected, licensee agrees
 to final review of work
 06/11/79 Review report issued
 07/09/79 Board to continue with
 suspension proceedings
 10/04/79 Licensee offers to wind
 down practice and surrender
 license
 10/15/79 Board sends consent order,
 licensee refuses to sign

*Information taken from board records.

In another situation the board was informed from an anonymous source that a licensee was conducting a practice in an unprofessional manner. The board requested a legal opinion from the department attorney concerning acting on anonymous complaints. The attorney informed the board of the difficulty of investigating a complaint where the complainant is unknown. The board was also informed of its options: to decline any investigation because the complaint was anonymous, or to investigate further because the nature and circumstances of the complaint appear to present sufficient justification.

We found no record of investigation of the licensee. There was a reference to the fact that since the complaint was filed anonymously, the board would not investigate. Over one year later the same licensee's license was indefinitely suspended by the board for unprofessional conduct. The final ruling followed legal action taken against the licensee at the county level. The board became aware of the county action when charges were filed. From that time on, the board was kept informed of the status of the proceedings and, on conviction, indefinitely suspended the license.

ASSESSMENT OF QUALITY CARE

One of the board's goals is to regulate the practice of dentistry and dental hygiene by monitoring the practice of licensees in the public interest. The

board makes reference to this goal in the board rules by stating it has the responsibility of investigating the actions of licensees on a continual basis even when no formal complaints have been filed (section 40-3.34(6)-S3450, ARM). Board members have stated that they do not perform peer reviews on a continual basis to assess quality of care. Investigations and reviews occur only when the board receives formal complaints.

In addition, the board is to inspect work authorization forms issued by dentists to dental laboratories (see page 19). Board members have stated that they do not regularly inspect these forms, but they would if the need arose.

DENTURISM

Staff members of the Federal Trade Commission stated that they are considering recommending to the Commission for consideration a rule that would prevent the enforcement of current dental laws against nondentists who provide dentures directly to consumers. This practice of fitting and selling complete dentures directly to consumers by nondentists is called denturism.

Virtually all states, including Montana, prohibit nondentists from selling dentures directly to consumers. Currently in Montana, and most other states, a dentist is required to take the impressions and fit the

dentures after they are made. Nondentists may fabricate dentures only upon the written authorization of a dentist. Doing so without authorization is considered practicing dentistry without a license. Several denturists have operated in Montana and were required to close their operations by county attorneys.

Proponents for allowing denturists to directly treat the consumer point out that the cost for dentures could be reduced. They also contend that denturists have the ability to fit dentures without the involvement of a dentist after the patient's teeth are removed. Some denturists concede that a certificate of oral health signed by a dentist or physician is advisable before the patient has the dentures made.

Opponents of denturists argue that technicians may have the mechanical skill to fabricate a denture, but they lack the additional skills and knowledge to properly fit dentures. Opponents contend that denturists do not have the ability to recognize diseased or abnormal tissue in the mouth. They also contend that the cost of dentures does not decrease once denturism becomes established.

During 1977 and 1978, several state legislatures rejected legislation that would have provided for the independent practice of denturism. In November 1978 an initiative on the ballot in Oregon was passed to provide for the licensure and independent practice of

denturists. The measure, which becomes effective July 1, 1980, requires patients to obtain a certificate of oral health from a dentist or physician before the denturist begins work. Montana's board has indicated that they would not want Montana's law changed to allow for the independent practice of denturists.

BOARD MEMBERSHIP

Association Appointments

Section 2-15-1606, MCA, states that ". . . At all times at least three members of the board shall be appointed from the list of candidates submitted by the Montana state dental association and one member shall be appointed from the list submitted by the Montana dental hygienists' association." Two recent state supreme court decisions have nullified such statutory appointment processes in South Carolina and Washington. The courts ruled that the statutes requiring board members to be appointed from lists submitted by the states' chiropractic associations were an unconstitutional delegation of governmental authority to a private organization. The delegation of such authority under Montana's dentistry law should therefore be reviewed.

Public Membership

In 1979 the size of the board was increased from five members to six by the inclusion of a dental hygienist. An additional change requires each member of the

board to be actively engaged in practice while serving on the board.

In order to facilitate public input into board operations, some states have required that regulatory boards have public members. Illustration 7 (page 23) shows seven dental boards with at least one public member. Montana's board does not have a public member.

The National Task Force on State Dental Policies supports public membership on dental boards. Appointment of public members should be balanced against factors such as the size of the board and the number of auxiliary groups represented. Board members have indicated an interest in having a public member on the board.

Gubernatorial Appointments

Gubernatorial appointments to the board are not subject to Senate confirmation. The Senate confirms the appointments to some of the state's boards and commissions. In addition, during the 1977-79 biennium of sunset, the Legislative Audit Committee recommended that appointments to regulatory boards be subject to Senate confirmation.

COUNTY REGISTRATION OF DENTISTS

The law (section 37-4-303, MCA) requires dentists to register their certificate with the county clerk and recorder of each county in which they desire to practice. This requirement was part of the original law

passed in 1895. A similar requirement exists for optometrists, osteopaths, and chiropractors. The law also states that each county clerk and recorder is to maintain a special book known as the register of dentists and is to receive a filing and registration fee of \$1.

Seven counties were contacted to determine if they were registering dentists as required by law. Two counties had one dentist registered, who in each case was a new dentist. One county did not have any dentists registered and the clerk and recorder was not aware of the law. The remaining counties had a few dentists registered, except for one county which had an estimated 90 percent of the dentists registered.

Board members have indicated that they do not see a need for dentists to register with each county in which they work. The board's meeting minutes show that the board discussed this issue. The minutes state that it was the consensus of the board that this portion of the law has not been enforced and is now obsolete.

This requirement of the law appears unnecessary since most dentists are currently not registering with the counties and the board does not see a need for the requirement.

CONTINUED COMPETENCY

The law requires dentists and dental hygienists (sections 37-4-307 and 406, MCA, respectively) to pay a

renewal fee each year. This is the only renewal requirement. The only proof of competency is the initial requirements that must be met for entry into the profession. This same situation exists for most other professions; although doctors, lawyers, teachers, and accountants are now required to show some proof of continued competency in some states.

As of June 1977, nine states have adopted laws requiring continuing education for dentists and other states are considering such laws. Eight other states require continuing education for membership in the state dental association. The Montana Dental and Dental Hygienists' Associations are considering the continuing education question at this time.

Conversations with board members have indicated several problems with continuing education. The value of the training received can be questioned. One board member was licensed in a state which has had a continuing education requirement since 1969. This board member said it took only six months to satisfy five years' worth of continuing education requirements. There is also no guarantee of a correlation between continuing education and competency of the dentist. The dentist who acquires the most continuing education credits is not necessarily the most competent dentist.

BOARD'S REPORTING REQUIREMENTS

Regulatory boards are often criticized as agencies which are not accountable. A report containing specific

information would allow the legislature to monitor the board's activity.

Montana currently has a reporting requirement, section 2-7-102, MCA, which requires all state governmental agencies to submit biennial reports to the Governor. These reports, when published, contain limited information. The Governor's Report for 1978 for Department of Professional and Occupational Licensing boards only gives each board's disbursements, program description, and recommendations for improvements.

The National Task Force on State Dental Policies recommends the reporting of the following information: the number of examinations held, the number of applicants in each licensure group, the pass-fail rate in each group, board receipts and expenditures, and other information which the legislature may deem appropriate.

DUTIES OF LICENSEES

Most boards do not place a responsibility with the licensee to provide information that would alert the board to potential problem areas. For example, the boards never learn of the existence or results of malpractice actions which could be indications of the quality of services which licensees provide.

In an attempt to correct the situation, the Task Force defined several duties for licensees:

1. As a condition of renewal of a license, each licensee shall report information pertaining

to age, practice location(s), practice characteristics, practice status (full-time, active, semi-active, inactive), and other information determined by rule. A change in home or office address shall be reported when it occurs.

2. Each licensee, upon license renewal, shall report to the board every instance of the prior licensure period in which the quality of his professional services was the subject of legal action and which resulted in a settlement or verdict in excess of a certain dollar amount
3. Each licensee shall prominently display at the primary place of practice his license to practice.
4. Each practitioner shall report within 20 days, upon demand from the board, the names, addresses, duties, credentials, and education of the auxiliaries he supervises or employs.

Item number two could be partially satisfied by section 33-23-311, MCA, which was passed in 1977. This law requires all insurance companies issuing professional liability insurance in Montana to report to the Commissioner of Insurance any information and statistics which he considers necessary. The commissioner, in turn, is required to submit this information to the appropriate licensing authority at its request. The Chief Insurance Examiner of the Insurance Division stated that as of October 1979 none of the Department of Professional and Occupational Licensing boards have requested any of the information available under this law. In addition, if a licensee was the subject of legal action not covered by liability insurance, this would not be revealed under this law.

Licensees are required to display their annual registration certificate and to report certain information on dental auxiliaries. The board does not require licensees to submit basic information concerning their practice at the time of license renewal, nor are licensees required to report information concerning legal action against them.

PRACTICE RESTRICTIONS

The Federal Trade Commission's San Francisco office has begun an investigation into state laws that restrict alternative dental practices. Many states, including Montana, prohibit the employment of dentists by nondentists and the offering of dental services by nonprofessional corporations. Montana's law (section 37-4-101(2)(6), MCA) states that a person is practicing dentistry if he "is a manager, proprietor, operator, or conductor of a place where . . . dental services are performed." This, in effect, prevents dentists from working for nondentists or forming corporations or partnerships with nondentists.

EXCLUSIVE TYING ARRANGEMENTS

Section 53-3-103, MCA, states in part that:

". . . medical aid and hospitalization for county residents and nonresidents within the county unable to provide these necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners and are payable from the county poor fund. The board of county commissioners shall make provisions for competent and skilled . . . dental services as approved by the dental association . . ."

Not all practitioners in the dentistry field are members of the association. Association members represent approximately 95 percent of the profession in Montana. By establishing in the statutes that skilled services must be approved by the association, there exists an exclusive tying arrangement. The intent of association approval appears to be to obtain professional consultation for the county commissioners, but what also occurs is that a specified private organization has approval authority over the expending of governmental funds.

The purpose of licensing dentists is to assure competent practitioners. Thus, approval of skilled services should most likely lie with the governmental body responsible for assuring competence, not a private association.

REIMBURSEMENT FOR BOARD TRAVEL

Section 37-4-204, MCA, states in part, that:

"Board members who are delegates to meetings of the national association shall be reimbursed . . . first class railroad and Pullman fares actually incurred to and from his place of residence to the place of a meeting."

This portion of the statutes was enacted in 1935. It is apparently outdated and its relevance should be reviewed.

EMERGENCY FUND

According to section 37-4-307, MCA, the board may change the annual license fees to maintain in the

earmarked revenue fund at all times, an amount to be used for the purpose of administering, policing and enforcing the act. The "emergency fund", as it is referred to in the statutes, is to be maintained at an approximate level of \$2,500. This section, also part of the act enacted in 1935, appears to be unnecessary. The general purpose of establishing and collecting fees is to provide adequate revenue to cover the costs of administering the act. No other board has a designated emergency fund. If, in the course of the licensing year, additional funds are required above those which are appropriated, budget amendments can be requested. The necessity of requiring a \$2,500 emergency fund is questionable.

AUTOMATED LICENSE RECORDS

Records on licensees are kept manually. In addition, each new or renewed license must be manually typed by the administrative assistant. An alternative is to automate the licensee records. The automated system could print the renewal notices and also the licenses. Further, such automated records could be used to generate statistical reports on the licensee population. Additions, deletions, and corrections to the licensee files could be made easily.

MULTI-YEAR RENEWAL

Currently, statute requires annual renewal by dentists and dental hygienists. Annual renewal may not

be necessary and may result in administrative costs in excess of those necessary for effective regulation. The administrative assistant for the board spends a relatively significant amount of time notifying licensees that their licenses are due for renewal and then processing those renewals. One alternative to this expenditure of time is to spread the renewals over two or more years. If license renewals are extended for more than one year, this will reduce the workload for the department. Multi-year licensing would create savings in administrative expenses. The amount saved would depend upon the number of licensees renewing each year. In order to maintain a level of income consistent with administrative expenses, the renewal fee as established may have to be increased from the current annual renewal fee. Due to a potential reduction in costs, the renewal fee for a biennial renewal, for example, would not necessarily have to be double the current fee.

OTHER AREAS OF CONSIDERATION

In previous reviews of regulatory boards in Montana, the aspect of uniformity among boards in reimbursement of board members and setting licensing fees commensurate with the cost of regulation were often discussed. These issues were not addressed in this review since Board of Dentistry members are reimbursed

according to reimbursement policies similar to other boards, and the account fund balance has not been increasing due to excessive fees.

